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HOUSE BILL 1769

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State of Washington

56th Legislature

1999 Regular Session

By Representatives Murray and Romero

Read first time . Referred to Committee on .

1 AN ACT Relating to repairs to residential rental property; and  
2 amending RCW 59.18.070, 59.18.100, and 59.18.115.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 59.18.070 and 1989 c 342 s 4 are each amended to read  
5 as follows:

6 If at any time during the tenancy the landlord fails to carry out  
7 the duties required by RCW 59.18.060 or by the rental agreement, the  
8 tenant may, in addition to pursuit of remedies otherwise provided him  
9 by law, deliver written notice to the person designated in RCW  
10 59.18.060(~~((11))~~) (12), or to the person who collects the rent, which  
11 notice shall specify the premises involved, the name of the owner, if  
12 known, and the nature of the defective condition. The landlord shall  
13 commence remedial action after receipt of such notice by the tenant as  
14 soon as possible but not later than the following time periods, except  
15 where circumstances are beyond the landlord's control:

16 (1) Not more than twenty-four hours, where the defective condition  
17 deprives the tenant of hot or cold water, heat, ~~((or))~~ gas,  
18 electricity, ~~((or is imminently hazardous to life))~~ septic or sewer  
19 service, defective or inadequate doors, locks, or windows, is a

1 substandard and dangerous condition under RCW 59.18.115(2)(a) or  
2 substantially endangers or impairs safety, health, or property of the  
3 tenant;

4 (2) Not more than (~~seventy-two~~) forty-eight hours, where the  
5 defective condition deprives the tenant of the use of a refrigerator,  
6 range (~~and~~), oven, or a major plumbing fixture supplied by the  
7 landlord, including, but not limited to, toilets, sinks, bathtubs, or  
8 showers, or where a smoke detector is inoperative or missing; and

9 (3) Not more than (~~ten~~) five days in all other cases.

10 In each instance the burden shall be on the landlord to see that  
11 remedial work under this section is completed promptly. If completion  
12 is delayed due to circumstances beyond the landlord's control,  
13 (~~including the unavailability of financing,~~) the landlord shall  
14 remedy the defective condition as soon as possible.

15 **Sec. 2.** RCW 59.18.100 and 1989 c 342 s 5 are each amended to read  
16 as follows:

17 (1) (~~If at any time during the tenancy, the landlord fails to~~  
18 ~~carry out any of the duties imposed by RCW 59.18.060, and notice of the~~  
19 ~~defect is given to the landlord pursuant to RCW 59.18.070, the tenant~~  
20 ~~may submit to the landlord or his designated agent by certified mail or~~  
21 ~~in person a good faith estimate by the tenant of the cost to perform~~  
22 ~~the repairs necessary to correct the defective condition if the repair~~  
23 ~~is to be done by licensed or registered persons, or if no licensing or~~  
24 ~~registration requirement applies to the type of work to be performed,~~  
25 ~~the cost if the repair is to be done by responsible persons capable of~~  
26 ~~performing such repairs. Such estimate may be submitted to the~~  
27 ~~landlord at the same time as notice is given pursuant to RCW 59.18.070:~~  
28 ~~PROVIDED, That the remedy provided in this section shall not be~~  
29 ~~available for a landlord's failure to carry out the duties in RCW~~  
30 ~~59.18.060 (9), and (11): PROVIDED FURTHER, That if the tenant utilizes~~  
31 ~~this section for repairs pursuant to RCW 59.18.060(6), the tenant shall~~  
32 ~~promptly provide the landlord with a key to any new or replaced locks.~~  
33 ~~The amount the tenant may deduct from the rent may vary from the~~  
34 ~~estimate, but cannot exceed the one-month limit as described in~~  
35 ~~subsection (2) of this section.~~

36 (~~2~~)) If the landlord fails to commence remedial action of the  
37 defective condition within the applicable time period after receipt of  
38 notice (~~and the estimate from the tenant~~), the tenant may contract

1 with a licensed or registered person, or with a responsible person  
2 capable of performing the repair if no license or registration is  
3 required, to make the repair, and upon the completion of the repair  
4 (~~and an opportunity for inspection by the landlord or his designated~~  
5 ~~agent~~), the tenant may deduct the cost of repair from the rent in an  
6 amount not to exceed the sum expressed in dollars representing one  
7 month's rental of the tenant's unit or one thousand two hundred  
8 dollars, whichever is greater, per repair(~~(: PROVIDED, That)~~). When  
9 the landlord must commence to remedy the defective condition within  
10 ~~((ten))~~ five days as provided in RCW 59.18.070(3), the tenant cannot  
11 contract for repairs for ~~((ten))~~ five days after notice (~~(or five days~~  
12 ~~after the landlord receives the estimate, whichever is later:~~ ~~PROVIDED~~  
13 ~~FURTHER, That)~~). The total costs of repairs deducted in any twelve-  
14 month period under this subsection shall not exceed the sum expressed  
15 in dollars representing two month's rental of the tenant's unit or two  
16 thousand four hundred dollars, whichever is greater. However, if the  
17 repair is required to be commenced within twenty-four hours under RCW  
18 59.18.070(1), there is no limit on the amount of rent the tenant may  
19 deduct.

20 ~~((+3))~~ (2) If the landlord fails to carry out the duties imposed  
21 by RCW 59.18.060 within the applicable time period, and if the cost of  
22 repair does not exceed ~~((one-half))~~ one month's rent, or six hundred  
23 dollars, whichever is greater, including the cost of materials and  
24 labor, which shall be computed at the prevailing rate in the community  
25 for the performance of such work, and if repair of the condition need  
26 not by law be performed only by licensed or registered persons, and if  
27 the tenant has given notice under RCW 59.18.070, ((although no estimate  
28 ~~shall be necessary under this subsection,))~~ the tenant may repair the  
29 defective condition in a workmanlike manner and upon completion of the  
30 repair and an opportunity for inspection, the tenant may deduct the  
31 cost of repair from the rent(~~(: PROVIDED, That)~~). Repairs under this  
32 subsection are limited to defects within the leased premises(~~(:~~  
33 ~~PROVIDED FURTHER, That)~~). The cost per repair shall not exceed ~~((one-~~  
34 ~~half))~~ one month's rent of the unit or six hundred dollars, whichever  
35 is greater, and ((that)) the total costs of repairs deducted in any  
36 twelve-month period under this subsection shall not exceed ~~((one))~~ two  
37 month's rent of the unit, or one thousand two hundred dollars,  
38 whichever is greater. However, if the repair is required to be

1 commenced within twenty-four hours under RCW 59.18.070(1), there is no  
2 limit on the amount of rent the tenant may deduct.

3 (3) If the tenant uses this section for repairs under RCW  
4 59.18.060(6), the tenant shall promptly provide the landlord with a key  
5 to any new or replaced locks.

6 (4) The provisions of this section shall not:

7 (a) Create a relationship of employer and employee between landlord  
8 and tenant; or

9 (b) Create liability under the workers' compensation act; or

10 (c) Constitute the tenant as an agent of the landlord for the  
11 purposes of RCW (~~60.04.010 and 60.04.040~~) 60.04.011, 60.04.021, or  
12 60.04.031.

13 (5) Any repair work performed under the provisions of this section  
14 shall comply with the requirements imposed by any applicable code,  
15 statute, ordinance, or regulation. A landlord whose property is  
16 damaged because of repairs performed in a negligent manner may recover  
17 the actual damages in an action against the tenant.

18 (6) Nothing in this section shall prevent the tenant from agreeing  
19 with the landlord to undertake the repairs himself in return for cash  
20 payment or a reasonable reduction in rent, the agreement thereof to be  
21 agreed upon between the parties, and such agreement does not alter the  
22 landlord's obligations under this chapter.

23 **Sec. 3.** RCW 59.18.115 and 1989 c 342 s 16 are each amended to read  
24 as follows:

25 (1) The legislature finds that some tenants live in residences that  
26 are substandard and dangerous to their health and safety and that the  
27 repair and deduct remedies of RCW 59.18.100 may not be adequate to  
28 remedy substandard and dangerous conditions. Therefore, an  
29 extraordinary remedy is necessary if the conditions substantially  
30 endanger or impair the health ~~((and))~~, safety, or property of the  
31 tenant.

32 (2)(a) If a landlord fails to fulfill any substantial obligation  
33 imposed by RCW 59.18.060 that substantially endangers or impairs the  
34 health ~~((or))~~, safety, or property of a tenant, including (i)  
35 structural members that are of insufficient size or strength to carry  
36 imposed loads with safety, (ii) exposure of the occupants to the  
37 weather, (iii) plumbing and sanitation defects that directly expose the  
38 occupants to the risk of illness or injury, (iv) lack of water,

1 including hot water, (v) heating or ventilation systems that are not  
2 functional or are hazardous, (vi) defective, hazardous, or missing  
3 electrical wiring or electrical service, (vii) defective or inadequate  
4 exits that increase the risk of injury to occupants, ~~((and))~~ (viii)  
5 conditions that increase the risk of fire, flooding, or water damage,  
6 including a defective existing interior sprinkler system, and (ix)  
7 defective or inadequate doors, windows, or locks, the tenant shall give  
8 notice in writing to the landlord, specifying the conditions, acts,  
9 omissions, or violations. Such notice shall be sent to the landlord or  
10 to the person or place where rent is normally paid.

11 (b) If after receipt of the notice described in (a) of this  
12 subsection the landlord fails to remedy the condition or conditions  
13 within a reasonable amount of time under RCW 59.18.070, the tenant may  
14 request that the local government provide for an inspection of the  
15 premises with regard to the specific condition or conditions that exist  
16 as provided in (a) of this subsection. The local government shall have  
17 the appropriate government official, or may designate a public or  
18 disinterested private person or company capable of conducting the  
19 inspection and making the certification, conduct an inspection of the  
20 specific condition or conditions listed by the tenant ~~((, and shall not~~  
21 ~~inspect nor be liable for any other condition or conditions of the~~  
22 ~~premises. The purpose of this inspection is to verify, to the best of~~  
23 ~~the inspector's ability, whether the tenant's listed condition or~~  
24 ~~conditions exist and substantially endanger the tenant's health or~~  
25 ~~safety under (a) of this subsection; the inspection is for the purposes~~  
26 ~~of this private civil remedy, and therefore shall not be related to any~~  
27 ~~other governmental function such as enforcement of any code, ordinance,~~  
28 ~~or state law)).~~

29 (c) The local government or its designee, after receiving the  
30 request from the tenant to conduct an inspection under this section,  
31 shall conduct the inspection and make any certification within a  
32 reasonable amount of time not more than five days from the date of  
33 receipt of the request. The local government or its designee may enter  
34 the premises at any reasonable time to do the inspection, provided that  
35 he or she first shall display proper credentials and request entry.  
36 The local government or its designee shall whenever practicable, taking  
37 into consideration the imminence of any threat to the tenant's health  
38 or safety, give the landlord at least twenty-four hours notice of the  
39 date and time of inspection and provide the landlord with an

1 opportunity to be present at the time of the inspection. The landlord  
2 shall have no power or authority to prohibit entry for the inspection.

3 (d) The local government or its designee shall certify whether the  
4 condition or the conditions specified by the tenant do exist and (~~to~~  
5 ~~make the premises substantially unfit for human habitation or~~) can be  
6 a substantial risk to the health and safety of the tenant as described  
7 in (a) of this subsection. The certification shall be provided to the  
8 tenant, and a copy shall be included by the tenant with the notice sent  
9 to the landlord under subsection (3) of this section. The  
10 certification may be appealed to the local board of appeals, but the  
11 appeal shall not delay or preclude the tenant from proceeding with the  
12 escrow under this section.

13 (e) (~~The tenant shall not be entitled to deposit rent in escrow~~  
14 ~~pursuant to this section unless the tenant first makes a good faith~~  
15 ~~determination that he or she is unable to repair the conditions~~  
16 ~~described in the certification issued pursuant to subsection (2)(d) of~~  
17 ~~this section through use of the repair remedies authorized by RCW~~  
18 ~~59.18.100.~~

19 (f)) If the local government or its designee certifies that the  
20 condition or conditions specified by the tenant exist, the tenant shall  
21 then either pay the periodic rent due to the landlord or deposit all  
22 periodic rent then called for in the rental agreement and all rent  
23 thereafter called for in the rental agreement into a separate bank or  
24 savings and loan account into an escrow account maintained by a person  
25 authorized by law to set up and maintain escrow accounts, including  
26 escrow companies under chapter 18.44 RCW, financial institutions, or  
27 attorneys, or with the clerk of the court of the district or superior  
28 court where the property is located. These depositories are  
29 hereinafter referred to as "escrow." The tenant shall notify the  
30 landlord in writing of the deposit by mailing the notice postage  
31 prepaid by first class mail or by delivering the notice to the landlord  
32 promptly but not more than twenty-four hours after the deposit.

33 ((~~g~~)) (f) This section, when elected as a remedy by the tenant by  
34 sending the notice under subsection (3) of this section, shall be the  
35 exclusive remedy available to the tenant regarding defects described in  
36 the certification under subsection (2)(d) of this section(~~:- PROVIDED,~~  
37 ~~That~~). However, the tenant may (~~simultaneously~~) commence or pursue  
38 an action in an appropriate court, or at arbitration if so agreed, to

1 determine past, present, or future diminution in rental value of the  
2 premises due to any defective conditions.

3 (3) The notice to the landlord of the rent escrow under this  
4 section shall be a sworn statement by the tenant in substantially the  
5 following form:

6 NOTICE TO LANDLORD OF RENT ESCROW

7 Name of tenant:

8 Name of landlord:

9 Name and address of escrow:

10 Date of deposit of rent into escrow:

11 Amount of rent deposited into escrow:

12 The following condition has been certified by a local building  
13 official to substantially endanger, impair, or affect the  
14 health or safety of a tenant:

15 That written notice of the conditions needing repair was  
16 provided to the landlord on . . . , and . . . days have elapsed  
17 and the repairs have not been made.

18 . . . . .

19 (Sworn Signature)

20 (4) The escrow shall place all rent deposited in a separate rent  
21 escrow account in the name of the escrow in a bank or savings and loan  
22 association domiciled in this state. The escrow shall keep in a  
23 separate docket an account of each deposit, with the name and address  
24 of the tenant, and the name and address of the landlord and of the  
25 agent, if any.

26 (5)(a) A landlord who receives notice that the rent due has been  
27 deposited with an escrow pursuant to subsection (2) of this section  
28 may:

29 (i) Apply to the escrow for release of the funds after the local  
30 government certifies that the repairs to the conditions listed in the  
31 notice under subsection (3) of this section have been properly  
32 repaired. The escrow shall release the funds to the landlord less any  
33 escrow costs for which the tenant is entitled to reimbursement pursuant  
34 to this section, immediately upon written receipt of the local  
35 government certification that the repairs to the conditions listed in  
36 the notice under subsection (3) of this section have been properly  
37 completed.

1 (ii) File an action with the court and apply to the court for  
2 release of the rent on the grounds that the tenant did not comply with  
3 the notice requirement of subsection (2) or (3) of this section.  
4 Proceedings under this subsection shall be governed by the time,  
5 service, and filing requirements of RCW 59.18.370 regarding show cause  
6 hearings.

7 (iii) File an action with the court and apply to the court for  
8 release of the rent on the grounds that there was no violation of any  
9 obligation imposed upon the landlord or that the condition has been  
10 remedied.

11 (iv) This action may be filed in any court having jurisdiction,  
12 including small claims court. The tenant must be named as a party to  
13 any action filed by the landlord under this section, and may file an  
14 answer and counterclaim. If the tenant has vacated the premises or if  
15 the landlord has failed to commence an action with the court for  
16 release of the funds within sixty days after rent is deposited in  
17 escrow, the tenant may file an action to determine how and when any  
18 rent deposited in escrow shall be released or disbursed. A trial must  
19 be held within sixty days of the date of filing of the landlord's or  
20 tenant's complaint. The landlord shall not commence an unlawful  
21 detainer action for nonpayment of rent by serving or filing a summons  
22 and complaint if the tenant initially pays the rent called for in the  
23 rental agreement that is due into escrow as provided for under this  
24 section on or before the date rent is due or on or before the  
25 expiration of a three-day notice to pay rent or vacate and continues to  
26 pay the rent into escrow as the rent becomes due or prior to the  
27 expiration of a three-day notice to pay rent or vacate; provided that  
28 the landlord shall not be barred from commencing an unlawful detainer  
29 action for nonpayment of rent if the amount of rent that is paid into  
30 escrow is less than the amount of rent agreed upon in the rental  
31 agreement between the parties.

32 (b) (~~The tenant shall be named as a party to any action filed by~~  
33 ~~the landlord under this section, and shall have the right to file an~~  
34 ~~answer and counterclaim, although any counterclaim shall be dismissed~~  
35 ~~without prejudice if the court or arbitrator determines that the tenant~~  
36 ~~failed to follow the notice requirements contained in this section.~~  
37 ~~Any counterclaim can only claim diminished rental value related to~~  
38 ~~conditions specified by the tenant in the notice required under~~  
39 ~~subsection (3) of this section. This limitation on the tenant's right~~

1 to counterclaim shall not affect the tenant's right to bring his or her  
2 own separate action. A trial shall be held within sixty days of the  
3 date of filing of the landlord's or tenant's complaint.

4 (e)) The tenant shall be entitled to reimbursement for any escrow  
5 costs or fees incurred for setting up or maintaining an escrow account  
6 pursuant to this section, unless the tenant did not comply with the  
7 notice requirements of subsection (2) or (3) of this section. Any  
8 escrow fees that are incurred for which the tenant is entitled to  
9 reimbursement shall be deducted from the rent deposited in escrow and  
10 remitted to the tenant at such time as any rent is released to the  
11 landlord or tenant. The prevailing party in any court action or  
12 arbitration brought under this section may also be awarded its costs  
13 and reasonable attorneys' fees.

14 ((d)) (c) If a court determines a diminished rental value of the  
15 premises, the tenant may pay the rent due based on the diminished value  
16 of the premises into escrow until the landlord makes the necessary  
17 repairs.

18 (6)(a) If a landlord brings an action for the release of rent  
19 deposited, the court may, upon application of the landlord, release  
20 part of the rent on deposit for payment of the debt service on the  
21 premises, the insurance premiums for the premises, utility services,  
22 and repairs to the rental unit.

23 (b) In determining whether to release rent for the payments  
24 described in (a) of this subsection, the court shall consider the  
25 amount of rent the landlord receives from other rental units in the  
26 buildings of which the residential premises are a part, the cost of  
27 operating those units, and the costs which may be required to remedy  
28 the condition contained in the notice. The court shall also consider  
29 whether the expenses are due or have already been paid, whether the  
30 landlord has other financial resources, or whether the landlord or  
31 tenant will suffer irreparable damage. The court may request the  
32 landlord to provide additional security, such as a bond, prior to  
33 authorizing release of any of the funds in escrow.

34 (7) If, by ninety days after the certification of the premises as  
35 substantially endangering or impairing the health, safety, or property  
36 of a tenant, the dwelling has not been certified as corrected and a  
37 copy of the corrected certification has not been provided to the escrow  
38 and the tenant, any moneys deposited in escrow are then payable to the  
39 tenant, and may be used for remedying the defects specified in the

- 1 certification or for the payment of utility services for which the
- 2 landlord is obligated.

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